



Reprinted
February 20, 2007

SENATE BILL No. 500

DIGEST OF SB 500 (Updated February 19, 2007 4:54 pm - DI 73)

Citations Affected: IC 5-22; IC 6-2.3; IC 6-2.5; IC 6-3; IC 6-4.1; IC 6-5.5; IC 6-6; IC 6-7; IC 6-8.1; noncode.

Synopsis: Tax procedure and administration changes. Restricts a sales tax exemption available under current law for an electric utility that purchases distribution equipment or transmission equipment. Restricts a sales tax exemption available under current law for a hotel or a restaurant that purchases electricity, water, gas, or steam. Restricts a sales tax exemption available under current law for an aircraft lessor that purchases an aircraft for rental or leasing. Provides for a graduated sales and use tax collection allowance for a retail merchant. Specifies conditions under which a professional tax return preparer must file client returns electronically. Decreases various periodic tax liability thresholds at which taxpayers are required to make tax payments by electronic fund transfer from \$10,000 to \$5,000. Provides that a tax payment made by electronic fund transfer is considered made on the date the taxpayer issues the payment order for the electronic fund transfer. Provides for the accrual of interest at the rate of 6% per annum on inheritance tax refunds that are not processed within 90 days by the department of state revenue. Increases the cigarette stamp discount to distributors from 1.2% to 2.523%. Provides that when a taxpayer claiming a refund requests a hearing on the claim, the department of state revenue must hold the requested hearing. Repeals a provision
(Continued next page)

Effective: Upon passage; January 1, 2007 (retroactive); July 1, 2007; January 1, 2008.

Kenley, Dillon

January 18, 2007, read first time and referred to Committee on Tax and Fiscal Policy.
January 29, 2007, amended, reported favorably — Do Pass.
February 19, 2007, read second time, amended, ordered engrossed.

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of the sales tax statute that requires certain out-of-state merchants making sales to customers in Indiana to register as retail merchants and remit sales and use tax. Provides a state sales tax exemption for transactions involving tangible personal property or services acquired by the National Football League or a professional football team to facilitate the league's holding of or the team's participation in a qualified football championship event. Provides that an entity may claim the exemption only if, before acquiring the property or service, the entity applies for and receives from the department of state revenue a state gross retail tax exemption certificate. Provides that an account owner of a college choice 529 education savings plan must repay a portion of a tax credit if any non-qualified withdrawal is made from the plan. Includes as non-qualified withdrawals any withdrawals made from an account that is terminated within 12 months after the account is opened, rollovers to another qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan account, and other withdrawals that do not meet the requirements of a qualified withdrawal. Provides a limited use tax exemption for an aircraft that is titled or registered in another state or country and is temporarily brought to Indiana to be repaired, refurbished, remanufactured, or subjected to a prepurchase evaluation. Expands the limited sales tax exemption under current law for a transaction involving an aircraft to include transactions in which the aircraft that is purchased by a nonresident remains in Indiana for up to 30 days after the aircraft is repaired, refurbished, or remanufactured. Expands the exemption from the aircraft registration requirements under the aircraft license excise tax statute for a nonresident who bases an aircraft with a dealer while the aircraft is being repaired, remodeled, or refurbished to include aircraft that are based with a person that has been issued a repair station certificate by the Federal Aviation Administration. Provides that a retail merchant may verify that the sale of property used or consumed in providing public transportation is exempt from sales tax by obtaining certain information from the purchaser. Allows a retail merchant that sold property to a person that used or consumed the property in providing public transportation to verify that the sale was exempt from sales tax by using the information contained in form ST-135 for the transaction. Provides that the penalty for underpayment of estimated corporate income tax is assessed only on the lesser of: (1) the difference between the actual amount paid by the corporation and 20% of the corporation's final tax liability for the taxable year; or (2) the difference between the actual amount paid by the corporation and 25% of the final tax liability for the corporation's previous taxable year. (Under current law, the penalty is assessed on the difference between the actual amount paid by a corporation on its estimated return and 25% of the corporation's final adjusted gross income tax liability for the taxable year.) Provides that these changes apply to taxable years beginning after December 15, 2007. Specifies that the rate of interest paid by the department of state revenue on excess tax payments must be the same as the rate of interest paid by a taxpayer for failing to pay the full amount of tax by the due date for a tax return. Makes technical corrections.

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First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 500

A BILL FOR AN ACT to amend the Indiana Code concerning
taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-22-16-4, AS AMENDED BY P.L.246-2005,
2 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2007]: Sec. 4. (a) An offeror that is a foreign corporation must
4 be registered with the secretary of state to do business in Indiana in
5 order to be considered responsible.
6 (b) This subsection applies to a purchase of ~~supplies or services~~
7 **tangible personal property** for a state agency under a contract entered
8 into or purchase order sent to an offeror (in the absence of a contract)
9 after June 30, ~~2003~~, **2007**, including a purchase described in
10 IC 5-22-8-2 or IC 5-22-8-3. A state agency may not purchase **tangible**
11 **personal property or services** from a person that is delinquent in the
12 payment of amounts due from the person under IC 6-2.5 (gross retail
13 and use tax) unless the person provides a statement from the
14 department of state revenue that the person's delinquent tax liability:
15 (1) has been satisfied; or
16 (2) has been released under IC 6-8.1-8-2.
17 (c) The purchasing agent may award a contract to an offeror pending

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the offeror's registration with the secretary of state. If, in the judgment of the purchasing agent, the offeror has not registered within a reasonable period, the purchasing agent shall cancel the contract. An offeror has no cause of action based on the cancellation of a contract under this subsection.

SECTION 2. IC 6-2.3-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 1. (a) Except as provided in subsections (c) through (e), a taxpayer shall file utility receipts tax returns with, and pay the taxpayer's utility receipts tax liability to, the department by the due date of the estimated return. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated utility receipts tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year which does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(b) With each return filed, with each payment by cashier's check, certified check, or money order delivered in person or by overnight courier, and with each electronic funds transfer made, a taxpayer shall pay to the department twenty-five percent (25%) of the estimated or the exact amount of utility receipts tax that is due.

(c) If a taxpayer's estimated annual utility receipts tax liability does not exceed one thousand dollars (\$1,000), the taxpayer is not required to file an estimated utility receipts tax return.

(d) If the department determines that a taxpayer's:

- (1) estimated quarterly utility receipts tax liability for the current year; or
- (2) average estimated quarterly utility receipts tax liability for the preceding year;

exceeds ~~ten~~ five thousand dollars (~~\$10,000~~), (**\$5,000**), the taxpayer shall pay the estimated utility receipts taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(e) If a taxpayer's utility receipts tax payment is made by electronic funds transfer, the taxpayer is not required to file an estimated utility receipts tax return.

(f) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on taxpayers failing to make payments as required

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in subsection (b) or (d). However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:

- (1) twenty percent (20%) of the final tax liability for the taxable year; or
- (2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25%) of the taxpayers's final utility receipts tax liability for the taxable year.

SECTION 3. IC 6-2.5-3-2, AS AMENDED BY P.L.162-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

(c) The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if:

- (1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or
- (2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

(d) The use tax is imposed on a person who:

- (1) manufactures, fabricates, or assembles tangible personal property from materials either within or outside Indiana; and
- (2) uses, stores, distributes, or consumes tangible personal property in Indiana.

(e) Notwithstanding any other provision of this section, the use tax

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is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if:

- (1) the property is delivered into Indiana by or for the purchaser of the property;
- (2) the property is delivered in Indiana for the sole purpose of being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and
- (3) the property is subsequently transported out of state for use solely outside Indiana.

(f) As used in this subsection, "prepurchase evaluation" means an examination of an aircraft by a potential purchaser for the purpose of obtaining information relevant to the potential purchase of the aircraft. Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over an aircraft, if:

- (1) the aircraft is titled, registered, or based (as defined in IC 6-6-6.5-1(m)) in another state or country;**
- (2) the aircraft is delivered to Indiana by or for a nonresident owner or purchaser of the aircraft;**
- (3) the aircraft is delivered to Indiana for the sole purpose of being repaired, refurbished, remanufactured, or subjected to a prepurchase evaluation; and**
- (4) after completion of the repair, refurbishment, remanufacture, or prepurchase evaluation, the aircraft is transported to a destination outside Indiana.**

SECTION 4. IC 6-2.5-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana. **However, unless** the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

(c) A retail merchant that sells tangible personal property to a person that purchases the tangible personal property for use or consumption in providing public transportation under IC 6-2.5-5-27 may verify the exemption by obtaining the person's:

- (1) name;**

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1 (2) address; and

2 (3) motor carrier number, United States Department of
3 Transportation number, or any other identifying number
4 authorized by the department.

5 The person engaged in public transportation shall provide a
6 signature to affirm under penalties of perjury that the information
7 provided to the retail merchant is correct and that the tangible
8 personal property is being purchased for an exempt purpose.

9 SECTION 5. IC 6-2.5-4-14 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. The department of
11 administration and each purchasing agent for a state educational
12 institution (as defined in IC 20-12-0.5-1) shall provide the department
13 with a list of every person who desires to enter into a contract to sell
14 **tangible personal property** ~~or services~~ to an agency (as defined in
15 IC 4-13-2-1) or a state educational institution. The department shall
16 notify the department of administration or the purchasing agent of the
17 state educational institution if a person on the list does not have a
18 registered retail merchant certificate or is delinquent in remitting or
19 paying amounts due to the department under this article.

20 SECTION 6. IC 6-2.5-5-3 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. (a) For purposes of
22 this section:

23 (1) the retreading of tires shall be treated as the processing of
24 tangible personal property; and

25 (2) commercial printing shall be treated as the production and
26 manufacture of tangible personal property.

27 (b) **Except as provided in subsection (c)**, transactions involving
28 manufacturing machinery, tools, and equipment are exempt from the
29 state gross retail tax if the person acquiring that property acquires it for
30 direct use in the direct production, manufacture, fabrication, assembly,
31 extraction, mining, processing, refining, or finishing of other tangible
32 personal property.

33 (c) **The exemption provided in subsection (b) does not apply to**
34 **transactions involving distribution equipment or transmission**
35 **equipment acquired by a public utility engaged in generating**
36 **electricity.**

37 SECTION 7. IC 6-2.5-5-8 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 8. (a) As used in this
39 section, "new motor vehicle" has the meaning set forth in
40 IC 9-13-2-111.

41 (b) Transactions involving tangible personal property other than a
42 new motor vehicle are exempt from the state gross retail tax if the

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person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of the person's business without changing the form of the property.

(c) The following transactions involving a new motor vehicle are exempt from the state gross retail tax:

(1) A transaction in which a person that has a franchise in effect at the time of the transaction for the vehicle trade name, trade or service mark, or related characteristics acquires a new motor vehicle for resale, rental, or leasing in the ordinary course of the person's business.

(2) A transaction in which a person that is a franchisee appointed by a manufacturer or converter manufacturer licensed under IC 9-23 acquires a new motor vehicle that has at least one (1) trade name, service mark, or related characteristic as a result of modification or further manufacture by the manufacturer or converter manufacturer for resale, rental, or leasing in the ordinary course of the person's business.

(3) A transaction in which a person acquires a new motor vehicle for rental or leasing in the ordinary course of the person's business.

(d) The rental or leasing of accommodations to a promoter by a political subdivision (including a capital improvement board) or the state fair commission is not exempt from the state gross retail tax, if the rental or leasing of the property by the promoter is exempt under IC 6-2.5-4-4.

(e) A transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules, that the annual amount of the lease revenue derived from leasing the aircraft is equal to or greater than fifteen percent (15%) of the greater of the original cost or the book value of the aircraft.

SECTION 8. IC 6-2.5-5-35 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35. **(a) Except as provided in subsection (b),** transactions involving tangible personal property are exempt from the state gross retail tax if:

(1) the:

(A) person acquires the property to facilitate the service or consumption of food and food ingredients that is not exempted from the state gross retail tax under section 20 of this chapter;

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and

(B) property is:

- (i) used, consumed, or removed in the service or consumption of the food and food ingredients; and
- (ii) made unusable for further service or consumption of food and food ingredients after the property's first use for service or consumption of food and food ingredients; or

(2) the:

(A) person acquiring the property is engaged in the business of renting or furnishing rooms, lodgings, or accommodations in a commercial hotel, motel, inn, tourist camp, or tourist cabin; and

(B) ~~the~~ property acquired is:

- (i) used up, removed, or otherwise consumed during the occupation of the rooms, lodgings, or accommodations by a guest; or
- (ii) rendered nonreusable by the property's first use by a guest during the occupation of the rooms, lodgings, or accommodations.

(b) The exemption provided by subsection (a) does not apply to transactions involving electricity, water, gas, or steam.

SECTION 9. IC 6-2.5-5-39, AS AMENDED BY P.L.92-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:

- (1) without motive power;
- (2) designed for carrying property;
- (3) designed for being drawn by a motor vehicle; and
- (4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.

(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.

(c) A transaction involving a cargo trailer ~~or~~ a recreational vehicle ~~or an aircraft~~ is exempt from the state gross retail tax if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer ~~or~~ recreational vehicle, ~~or aircraft~~, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ will be

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1 titled or registered for use in another state or country;

2 (4) the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ will not be
3 titled or registered for use in Indiana; and

4 (5) ~~in the case of a transaction involving a cargo trailer or~~
5 ~~recreational vehicle~~; the cargo trailer or recreational vehicle will
6 be titled or registered in a state or country that provides an
7 exemption from sales, use, or similar taxes imposed on a cargo
8 trailer or recreational vehicle that is purchased in that state or
9 country by an Indiana resident and will be titled or registered in
10 Indiana.

11 A transaction involving a cargo trailer or recreational vehicle that does
12 not meet the requirements of subdivision (5) is not exempt from the
13 state gross retail tax.

14 (d) A purchaser must claim an exemption under this section by
15 submitting to the retail merchant an affidavit stating the purchaser's
16 intent to:

17 (1) transport the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ to
18 a destination outside Indiana within thirty (30) days after delivery;
19 and

20 (2) title or register the cargo trailer ~~or~~ recreational vehicle ~~or~~
21 ~~aircraft~~ for use in another state or country.

22 The department shall prescribe the form of the affidavit, which must
23 include an affirmation by the purchaser under the penalties for perjury
24 that the information contained in the affidavit is true. The affidavit
25 must identify the state or country in which the cargo trailer ~~or~~
26 recreational vehicle ~~or aircraft~~ will be titled or registered.

27 (e) The department shall provide the information necessary to
28 determine a purchaser's eligibility for an exemption claimed under this
29 section to retail merchants in the business of selling cargo trailers or
30 recreational vehicles.

31 SECTION 10. IC 6-2.5-5-42 IS ADDED TO THE INDIANA CODE
32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
33 1, 2007]: **Sec. 42. (a) A transaction involving an aircraft is exempt**
34 **from the state gross retail tax if:**

35 (1) the purchaser is a nonresident;

36 (2) the purchaser transports the aircraft to a destination
37 outside Indiana within thirty (30) days after:

38 (A) accepting delivery of the aircraft; or

39 (B) a repair, refurbishment, or remanufacture of the
40 aircraft is completed, if the aircraft remains in Indiana
41 after the purchaser accepts delivery for the purpose of
42 accomplishing the repair, refurbishment, or

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remanufacture of the aircraft;

(3) the aircraft will be:

(A) titled or registered in another state or country; or

(B) if a state or country does not require a title or registration for aircraft, based (as defined in IC 6-6-6.5-1(m)) in that state or country; and

(4) the aircraft will not be titled or registered in Indiana.

(b) A purchaser must claim an exemption under subsection (a) by submitting to the seller an affidavit affirming the elements required by subsection (a). In addition, the affidavit must identify the state or country in which the aircraft will be titled, registered, or based.

(c) Within sixty (60) days after:

(1) a purchaser who claims an exemption under this section accepts delivery of the aircraft; or

(2) a repair, refurbishment, or remanufacture of the aircraft subject to an exemption under this section is completed, if the aircraft remains in Indiana after the purchaser accepts delivery for the purpose of accomplishing the repair, refurbishment, or remanufacture of the aircraft;

the purchaser shall provide the seller with a copy of the purchaser's title or registration of the aircraft outside Indiana. If the state or country in which the aircraft is based does not require the aircraft to be titled or registered, the purchaser shall provide the seller with a copy of the aircraft registration application for the aircraft as filed with the Federal Aviation Administration.

(d) The department shall prescribe the form of the affidavit required by subsection (b).

SECTION 11. IC 6-2.5-5-43 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 43. (a) As used in this section, "qualified football championship event" means the National Football League championship football game, referred to as the Super Bowl.

(b) Transactions involving tangible personal property or services are exempt from the state gross retail tax if the following conditions are satisfied:

(1) Either:

(A) the National Football League acquires the property or service to facilitate the holding of a qualified football championship event; or

(B) a professional football team participating in a qualified football championship event acquires the property or

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1 service to facilitate the team's participation.

2 **(2) Before acquiring the property or service, the National**
 3 **Football League or professional football team applies for and**
 4 **receives from the department a state gross retail tax**
 5 **exemption certificate under this section. The department shall**
 6 **specify the period for which a state gross retail tax exemption**
 7 **certificate issued under this section is valid.**

8 SECTION 12. IC 6-2.5-6-1, AS AMENDED BY P.L.153-2006,
 9 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JANUARY 1, 2008]: Sec. 1. (a) Except as otherwise provided in this
 11 section, each person liable for collecting the state gross retail or use tax
 12 shall file a return for each calendar month and pay the state gross retail
 13 and use taxes that the person collects during that month. A person shall
 14 file the person's return for a particular month with the department and
 15 make the person's tax payment for that month to the department not
 16 more than thirty (30) days after the end of that month, if that person's
 17 average monthly liability for collections of state gross retail and use
 18 taxes under this section as determined by the department for the
 19 preceding calendar year did not exceed one thousand dollars (\$1,000).
 20 If a person's average monthly liability for collections of state gross
 21 retail and use taxes under this section as determined by the department
 22 for the preceding calendar year exceeded one thousand dollars
 23 (\$1,000), that person shall file the person's return for a particular month
 24 and make the person's tax payment for that month to the department not
 25 more than twenty (20) days after the end of that month.

26 (b) If a person files a combined sales and withholding tax report and
 27 either this section or IC 6-3-4-8.1 requires sales or withholding tax
 28 reports to be filed and remittances to be made within twenty (20) days
 29 after the end of each month, then the person shall file the combined
 30 report and remit the sales and withholding taxes due within twenty (20)
 31 days after the end of each month.

32 (c) Instead of the twelve (12) monthly reporting periods required by
 33 subsection (a), the department may permit a person to divide a year into
 34 a different number of reporting periods. The return and payment for
 35 each reporting period is due not more than twenty (20) days after the
 36 end of the period.

37 (d) Instead of the reporting periods required under subsection (a),
 38 the department may permit a retail merchant to report and pay the
 39 merchant's state gross retail and use taxes for a period covering:

40 (1) a calendar year, if the retail merchant's average monthly state
 41 gross retail and use tax liability in the previous calendar year does
 42 not exceed ten dollars (\$10);

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- (2) a calendar half year, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed twenty-five dollars (\$25); or
- (3) a calendar quarter, if the retail merchant's average monthly state gross retail and use tax liability in the previous calendar year does not exceed seventy-five dollars (\$75).

A retail merchant using a reporting period allowed under this subsection must file the merchant's return and pay the merchant's tax for a reporting period not later than the last day of the month immediately following the close of that reporting period.

(e) If a retail merchant reports the merchant's adjusted gross income tax, or the tax the merchant pays in place of the adjusted gross income tax, over a fiscal year or fiscal quarter not corresponding to the calendar year or calendar quarter, the merchant may, without prior departmental approval, report and pay the merchant's state gross retail and use taxes over the merchant's fiscal period that corresponds to the calendar period the merchant is permitted to use under subsection (d). However, the department may, at any time, require the retail merchant to stop using the fiscal reporting period.

(f) If a retail merchant files a combined sales and withholding tax report, the reporting period for the combined report is the shortest period required under:

- (1) this section;
- (2) IC 6-3-4-8; or
- (3) IC 6-3-4-8.1.

(g) If the department determines that a person's:

- (1) estimated monthly gross retail and use tax liability for the current year; or
- (2) average monthly gross retail and use tax liability for the preceding year;

exceeds ~~ten~~ **five** thousand dollars (~~\$10,000~~), (**\$5,000**), the person shall pay the monthly gross retail and use taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(h) If a person's gross retail and use tax payment is made by electronic funds transfer, the taxpayer is not required to file a monthly gross retail and use tax return. However, the person shall file a quarterly gross retail and use tax return before the twentieth day after the end of each calendar quarter.

(i) A person:

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- (1) who has voluntarily registered as a seller under the Streamlined Sales and Use Tax Agreement;
- (2) who is not a Model 1, Model 2, or Model 3 seller (as defined in the Streamlined Sales and Use Tax Agreement); and
- (3) whose liability for collections of state gross retail and use taxes under this section for the preceding calendar year as determined by the department does not exceed one thousand dollars (\$1,000);

is not required to file a monthly gross retail and use tax return.

SECTION 13. IC 6-2.5-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) In order to compensate retail merchants for collecting and timely remitting the state gross retail tax and the state use tax, every retail merchant, except a retail merchant referred to in subsection (c), is entitled to deduct and retain from the amount of those taxes otherwise required to be remitted under IC 6-2.5-7-5 or under this chapter, if timely remitted, a retail merchant's collection allowance.

(b) The allowance equals ~~eighty-three hundredths percent (0.83%)~~ **a percentage** of the retail merchant's state gross retail and use tax liability accrued during a ~~reporting period: calendar year, specified as follows:~~

(1) **Eighty-three hundredths percent (0.83%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year did not exceed sixty thousand dollars (\$60,000).**

(2) **Six-tenths percent (0.6%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year:**

(A) **was greater than or equal to sixty thousand dollars (\$60,000); and**

(B) **did not exceed six hundred thousand dollars (\$600,000).**

(3) **Three-tenths percent (0.3%), if the retail merchant's state gross retail and use tax liability accrued during the state fiscal year ending on June 30 of the immediately preceding calendar year was greater than or equal to six hundred thousand dollars (\$600,000).**

(c) A retail merchant described in IC 6-2.5-4-5 or IC 6-2.5-4-6 is not entitled to the allowance provided by this section.

SECTION 14. IC 6-3-2-20, AS ADDED BY P.L.162-2006, SECTION 26, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2007]: Sec. 20. (a) The following definitions apply throughout this section:

(1) "Affiliated group" has the meaning provided in Section 1504 of the Internal Revenue Code, except that the ownership percentage in Section 1504(a)(2) of the Internal Revenue Code shall be determined using fifty percent (50%) instead of eighty percent (80%).

(2) "Directly related intangible interest expenses" means interest expenses that are paid to, or accrued or incurred as a liability to, a recipient if:

(A) the amounts represent, in the hands of the recipient, income from making one (1) or more loans; and

(B) the funds loaned were originally received by the recipient from the payment of intangible expenses by any of the following:

(i) The taxpayer.

(ii) A member of the same affiliated group as the taxpayer.

(iii) A foreign corporation.

(3) "Foreign corporation" means a corporation that is organized under the laws of a country other than the United States and would be a member of the same affiliated group as the taxpayer if the corporation were organized under the laws of the United States.

(4) "Intangible expenses" means the following amounts to the extent these amounts are allowed as deductions in determining taxable income under Section 63 of the Internal Revenue Code before the application of any net operating loss deduction and special deductions for the taxable year:

(A) Expenses, losses, and costs directly for, related to, or in connection with the acquisition, use, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property.

(B) Royalty, patent, technical, and copyright fees.

(C) Licensing fees.

(D) Other substantially similar expenses and costs.

(5) "Intangible property" means patents, patent applications, trade names, trademarks, service marks, copyrights, trade secrets, and substantially similar types of intangible assets.

(6) "Interest expenses" means amounts that are allowed as deductions under Section 163 of the Internal Revenue Code in determining taxable income under Section 63 of the Internal Revenue Code before the application of any net operating loss

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deductions and special deductions for the taxable year.

(7) "Makes a disclosure" means a taxpayer provides the following information regarding a transaction with a member of the same affiliated group or a foreign corporation involving an intangible expense and any directly related intangible interest expense with the taxpayer's tax return on the forms prescribed by the department:

(A) The name of the recipient.

(B) The state or country of domicile of the recipient.

(C) The amount paid to the recipient.

(D) A copy of federal Form 851, Affiliation Schedule, as filed with the taxpayer's federal consolidated tax return.

(E) The information needed to determine the taxpayer's status under the exceptions listed in subsection (c).

(8) "Recipient" means:

(A) a member of the same affiliated group as the taxpayer; or

(B) a foreign corporation;

to which is paid an item of income that corresponds to an intangible expense or any directly related intangible interest expense.

(9) "Unrelated party" means a person that, with respect to the taxpayer, is not a member of the same affiliated group or a foreign corporation.

(b) Except as provided in subsection (c), in determining its adjusted gross income under IC 6-3-1-3.5(b), a corporation subject to the tax imposed by IC 6-3-2-1 shall add to its taxable income under Section 63 of the Internal Revenue Code:

(1) intangible expenses; and

(2) any directly related intangible interest expenses;

paid, accrued, or incurred with one (1) or more members of the same affiliated group or with one (1) or more foreign corporations.

(c) The addition of intangible expenses or any directly related intangible interest expenses otherwise required in a taxable year under subsection (b) is not required if one (1) or more of the following apply to the taxable year:

(1) The taxpayer and the recipient are both included in the same consolidated tax return filed under IC 6-3-4-14 or in the same combined return filed under IC 6-3-2-2(q) for the taxable year.

(2) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:

(A) the item of income corresponding to the intangible

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expenses and any directly related intangible interest expenses was included within the recipient's income that is subject to tax in:

(i) a state or possession of the United States; or

(ii) a country other than the United States;

that is the recipient's commercial domicile and that imposes a net income tax, a franchise tax measured, in whole or in part, by net income, or a value added tax;

(B) the transaction giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient was made at a commercially reasonable rate and at terms comparable to an arm's length transaction; and

(C) the transactions giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.

(3) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:

(A) the recipient regularly engages in transactions involving intangible property with one (1) or more unrelated parties on terms substantially similar to those of the subject transaction; and

(B) the transaction giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.

(4) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:

(A) the payment was received from a person or entity that is an unrelated party, and on behalf of that unrelated party, paid that amount to the recipient in an arm's length transaction; and

(B) the transaction giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.

(5) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:

(A) the recipient paid, accrued, or incurred a liability to an

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unrelated party during the taxable year for an equal or greater amount that was directly for, related to, or in connection with the same intangible property giving rise to the intangible expenses; and

(B) the transactions giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose.

(6) The taxpayer makes a disclosure and, at the request of the department, can establish by a preponderance of the evidence that:

(A) the recipient is engaged in:

- (i) substantial business activities from the acquisition, use, licensing, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property; or
- (ii) other substantial business activities separate and apart from the business activities described in item (i);

as evidenced by the maintenance of a permanent office space and an adequate number of full-time, experienced employees;

(B) the transactions giving rise to the intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient did not have Indiana tax avoidance as a principal purpose; and

(C) the transactions were made at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(7) The taxpayer and the department agree, in writing, to the application or use of an alternative method of allocation or ~~appointment~~ **apportionment** under section 2(l) or 2(m) of this chapter.

(8) Upon request by the taxpayer, the department determines that the adjustment otherwise required by this section is unreasonable.

(d) For purposes of this section, intangible expenses or directly related intangible interest expenses shall be considered to be at a commercially reasonable rate or at terms comparable to an arm's length transaction if the intangible expenses or directly related intangible interest expenses meet the arm's length standards of United States Treasury Regulation 1.482-1(b).

(e) If intangible expenses or directly related intangible expenses are determined not to be at a commercially reasonable rate or at terms comparable to an arm's length transaction for purposes of this section, the adjustment required by subsection (b) shall be made only to the extent necessary to cause the intangible expenses or directly related

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intangible interest expenses to be at a commercially reasonable rate and at terms comparable to an arm's length transaction.

(f) For purposes of this section, transactions giving rise to intangible expenses and any directly related intangible interest expenses between the taxpayer and the recipient shall be considered as having Indiana tax avoidance as the principal purpose if:

(1) there is not one (1) or more valid business purposes that independently sustain the transaction notwithstanding any tax benefits associated with the transaction; and

(2) the principal purpose of tax avoidance exceeds any other valid business purpose.

SECTION 15. IC 6-3-3-12, AS ADDED BY P.L.192-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 12. **(a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.**

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

~~(a)~~ **(d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.**

(e) As used in this section, "non-qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship;

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or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan.

(b) (h) As used in this section, "taxpayer" means:

(1) an individual filing a single return; or

(2) a married couple filing a joint return.

(c) (i) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

(1) Twenty percent (20%) of the amount of ~~each contribution~~ **the total contributions** made by the taxpayer to ~~an account or accounts of~~ a college choice 529 education savings plan during the taxable year.

(2) One thousand dollars (\$1,000).

(3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(d) (j) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(e) (k) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(f) (l) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(m) **An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any non-qualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:**

(1) **twenty percent (20%) of the total amount of non-qualified withdrawals made during the taxable year from the account;**

or

(2) the excess of:

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(A) the cumulative amount of all credits provided by this section that were claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over (B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.

(n) Any required repayment under subsection (m) shall be reported by the account owner on the account owner's annual state income tax return for any taxable year in which a non-qualified withdrawal is made.

(o) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

- (1) non-qualified withdrawals made from accounts of a college choice 529 education savings plan for the taxable year; or
- (2) account closings for the taxable year.

SECTION 16. IC 6-3-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1.5. If a professional preparer files more than one hundred (100) returns in a calendar year for persons described in section 1(1) or 1(2) of this chapter, in the immediately following calendar year the professional preparer shall file returns for persons described in section 1(1) or 1(2) of this chapter in an electronic format specified by the department.

SECTION 17. IC 6-3-4-4.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE DECEMBER 16, 2007]: Sec. 4.1. (a) This section applies to taxable years beginning after December 31, 1993.

(b) Any individual required by the Internal Revenue Code to file estimated tax returns and to make payments on account of such estimated tax shall file estimated tax returns and make payments of the tax imposed by this article to the department at the time or times and in the installments as provided by Section 6654 of the Internal Revenue Code. However, in applying Section 6654 of the Internal Revenue Code for the purposes of this article, "estimated tax" means the amount which the individual estimates as the amount of the adjusted gross income tax imposed by this article for the taxable year, minus the amount which the individual estimates as the sum of any credits against the tax provided by IC 6-3-3.

(c) Every individual who has adjusted gross income subject to the

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tax imposed by this article and from which tax is not withheld under the requirements of section 8 of this chapter shall make a declaration of estimated tax for the taxable year. However, no such declaration shall be required if the estimated tax can reasonably be expected to be less than four hundred dollars (\$400). In the case of an underpayment of the estimated tax as provided in Section 6654 of the Internal Revenue Code, there shall be added to the tax a penalty in an amount prescribed by IC 6-8.1-10-2.1(b).

(d) Every corporation subject to the adjusted gross income tax liability imposed by this article shall be required to report and pay an estimated tax equal to twenty-five percent (25%) of such corporation's estimated adjusted gross income tax liability for the taxable year. A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's estimated adjusted gross income tax returns and pay the tax to the department on or before April 20, June 20, September 20, and December 20 of the taxable year. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing estimated adjusted gross income tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and forms for such reporting and payment.

(e) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on corporations failing to make payments as required in subsection (d) or (g). However, no penalty shall be assessed as to any estimated payments of adjusted gross income tax which equal or exceed:

- (1) twenty percent (20%) of the final tax liability for such taxable year; or
- (2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall only be assessed on the **lesser of the** difference between the actual amount paid by the corporation on such estimated return and ~~twenty-five percent (25%) of the corporation's final adjusted gross income tax liability for such taxable year; the amount calculated in subdivision (1) or the difference between the actual amount paid by the corporation on the estimated return and the amount calculated in subdivision (2).~~

(f) The provisions of subsection (d) requiring the reporting and estimated payment of adjusted gross income tax shall be applicable only to corporations having an adjusted gross income tax liability which, after application of the credit allowed by IC 6-3-3-2 (repealed),

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shall exceed one thousand dollars (\$1,000) for its taxable year.

(g) If the department determines that a corporation's:

(1) estimated quarterly adjusted gross income tax liability for the current year; or

(2) average estimated quarterly adjusted gross income tax liability for the preceding year;

exceeds ~~before January 1, 1998, twenty thousand dollars (\$20,000); and, after December 31, 1997, ten five thousand dollars (\$10,000); (\$5,000),~~ after the credit allowed by IC 6-3-3-2 (repealed), the corporation shall pay the estimated adjusted gross income taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or overnight by courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(h) If a corporation's adjusted gross income tax payment is made by electronic funds transfer, the corporation is not required to file an estimated adjusted gross income tax return.

SECTION 18. IC 6-3-4-8.1, AS AMENDED BY P.L.111-2006, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 8.1. (a) Any entity that is required to file a monthly return and make a monthly remittance of taxes under sections 8, 12, 13, and 15 of this chapter shall file those returns and make those remittances twenty (20) days (rather than thirty (30) days) after the end of each month for which those returns and remittances are filed, if that entity's average monthly remittance for the immediately preceding calendar year exceeds one thousand dollars (\$1,000).

(b) The department may require any entity to make the entity's monthly remittance and file the entity's monthly return twenty (20) days (rather than thirty (30) days) after the end of each month for which a return and payment are made if the department estimates that the entity's average monthly payment for the current calendar year will exceed one thousand dollars (\$1,000).

(c) If the department determines that a withholding agent is not withholding, reporting, or remitting an amount of tax in accordance with this chapter, the department may require the withholding agent:

(1) to make periodic deposits during the reporting period; and

(2) to file an informational return with each periodic deposit.

(d) If a person files a combined sales and withholding tax report and either this section or IC 6-2.5-6-1 requires the sales or withholding tax report to be filed and remittances to be made within twenty (20) days after the end of each month, then the person shall file the combined report and remit the sales and withholding taxes due within twenty (20)

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days after the end of each month.

(e) If the department determines that an entity's:

(1) estimated monthly withholding tax remittance for the current year; or

(2) average monthly withholding tax remittance for the preceding year;

exceeds ~~ten~~ five thousand dollars (~~\$10,000~~), **(\$5,000)**, the entity shall remit the monthly withholding taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the remittance is due.

(f) If an entity's withholding tax remittance is made by electronic fund transfer, the entity is not required to file a monthly withholding tax return.

SECTION 19. IC 6-4.1-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) A person may file with the department of state revenue a claim for the refund of inheritance or Indiana estate tax which has been erroneously or illegally collected. Except as provided in section 2 of this chapter, the person must file the claim within three (3) years after the tax is paid or within one (1) year after the tax is finally determined, whichever is later.

(b) The amount of the refund that a person is entitled to receive under this chapter equals the amount of the erroneously or illegally collected tax, plus interest ~~at the rate of six percent (6%) per annum computed from the date the tax was paid to the date it is refunded:~~ **calculated as specified in subsection (c).**

(c) If a tax payment that has been erroneously or illegally collected is not refunded within ninety (90) days after the date on which the refund claim is filed with the department of state revenue, interest accrues at the rate of six percent (6%) per annum computed from the date the refund claim is filed until the tax payment is refunded.

SECTION 20. IC 6-5.5-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. (a) Each taxpayer subject to taxation under this article shall report and pay quarterly an estimated tax equal to twenty-five percent (25%) of the taxpayer's total estimated tax liability imposed by this article for the taxable year. A taxpayer that uses a taxable year that ends on December 31 shall file the taxpayer's estimated quarterly financial institutions tax return and pay the tax to the department on or before April 20, June 20,

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September 20, and December 20 of the taxable year, without assessment or notice and demand from the department. If a taxpayer uses a taxable year that does not end on December 31, the due dates for filing the estimated quarterly financial institutions tax return and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year. The department shall prescribe the manner and furnish the forms for reporting and payment.

(b) Subsection (a) is applicable only to taxpayers having a tax liability imposed under this article that exceeds one thousand dollars (\$1,000) for the taxable year.

(c) If the department determines that a taxpayer's:

(1) estimated quarterly financial institutions tax liability for the current year; or

(2) average quarterly financial institutions tax payment for the preceding year;

exceeds ~~ten~~ five thousand dollars (~~\$10,000~~), (\$5,000), the taxpayer shall pay the quarterly financial institutions taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(d) If a taxpayer's financial institutions tax payment is made by electronic fund transfer, the taxpayer is not required to file a quarterly financial institutions tax return.

SECTION 21. IC 6-6-1.1-502 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 502. (a) Except as provided in subsection (b), at the time of filing each monthly report, each distributor shall pay to the administrator the full amount of tax due under this chapter for the preceding calendar month, computed as follows:

(1) Enter the total number of invoiced gallons of gasoline received during the preceding calendar month.

(2) Subtract the number of gallons for which deductions are provided by sections 701 through 705 of this chapter from the number of gallons entered under subdivision (1).

(3) Subtract the number of gallons reported under section 501(3) of this chapter.

(4) Multiply the number of invoiced gallons remaining after making the computation in subdivisions (2) and (3) by the tax rate prescribed by section 201 of this chapter to compute that part of the gasoline tax to be deposited in the highway, road, and street

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fund under section 802(2) of this chapter or in the motor fuel tax fund under section 802(3) of this chapter.

(5) Multiply the number of gallons subtracted under subdivision (3) by the tax rate prescribed by section 201 of this chapter to compute that part of the gasoline tax to be deposited in the fish and wildlife fund under section 802(1) of this chapter.

(b) If the department determines that a distributor's:

(1) estimated monthly gasoline tax liability for the current year; or

(2) average monthly gasoline tax liability for the preceding year; exceeds ~~ten~~ five thousand dollars (~~\$10,000~~), **(\$5,000)**, the distributor shall pay the monthly gasoline taxes due by electronic fund transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

SECTION 22. IC 6-6-6.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, unless the context clearly indicates otherwise:

(a) "Aircraft" means a device which is designed to provide air transportation for one (1) or more individuals or for cargo.

(b) "State" means the state of Indiana.

(c) "Department" refers to the department of state revenue.

(d) "Person" includes an individual, a partnership, a firm, a corporation, a limited liability company, an association, a trust, or an estate, or a legal representative of such.

(e) "Owner" means a person who holds or is required to obtain a certificate of registration from the Federal Aviation Administration for a specific aircraft. In the event an aircraft is the subject of an agreement for the conditional sale or lease with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of the aircraft vested in the conditional vendee or lessee, or in the event the mortgagor of an aircraft is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed to be the owner for purposes of this chapter.

(f) "Dealer" means a person who has an established place of business in this state, is required to obtain a certificate under IC 6-2.5-8-1 or IC 6-2.5-8-3 and is engaged in the business of manufacturing, buying, selling, or exchanging new or used aircraft.

(g) "Maximum landing weight" means the maximum weight of the aircraft, accessories, fuel, pilot, passengers, and cargo that is permitted on landing under the best conditions, as determined for an aircraft by

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the appropriate federal agency or the certified allowable gross weight published by the manufacturer of the aircraft.

(h) "Resident" means an individual or a fiduciary who resides or is domiciled within Indiana or any corporation or business association which maintains a fixed and established place of business within Indiana for a period of more than sixty (60) days in any one (1) year.

(i) "Taxable aircraft" means an aircraft required to be registered with the department by this chapter.

(j) "Regular annual registration date" means the last day of February of each year.

(k) "Taxing district" means a geographic area within which property is taxed by the same taxing units and at the same total rate.

(l) "Taxing unit" means an entity which has the power to impose ad valorem property taxes.

(m) "Base" means the location or place where the aircraft is normally hangared, tied down, housed, parked, or kept, when not in use.

(n) "Homebuilt aircraft" means an aircraft constructed primarily by an individual for personal use. The term homebuilt aircraft does not include an aircraft constructed primarily by a for-profit aircraft manufacturing business.

(o) "Pressurized aircraft" means an aircraft equipped with a system designed to control the atmospheric pressure in the crew or passenger cabins.

(p) "Establishing a base" means renting or leasing a hangar or tie down for a particular aircraft for at least thirty-one (31) days.

(q) "Inventory aircraft" means an aircraft held for resale by a registered Indiana dealer.

(r) "Repair station" means a person who holds a repair station certificate that was issued to the person by the Federal Aviation Administration under 14 CFR Part 145.

SECTION 23. IC 6-6-6.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date.

(b) Except as otherwise provided in this chapter, any nonresident who bases an aircraft in this state for more than sixty (60) days shall register the aircraft with the department under this chapter not later than sixty (60) days after establishing a base in Indiana.

(c) Except as otherwise provided in this chapter, an Indiana resident who owns a homebuilt aircraft shall register the aircraft with the

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department not later than thirty-one (31) days after the date the Federal Aviation Administration has issued the certificate of registration and air worthiness certificate for the aircraft.

(d) Notwithstanding subsection (b), if a nonresident bases an aircraft in Indiana with a dealer **or repair station** solely for repairing, remodeling, or refurbishing the aircraft, neither the nonresident nor the dealer **or repair station** is required to register the aircraft with the department under this chapter. However, the dealer **or repair station** shall file a report with the department the month after the end of each calendar quarter. The report must list only:

(1) the ~~dealer's~~ name and address **and of the dealer or repair station;**

(2) **either:**

(A) the dealer's certification number; **or**

(B) the repair station's certificate number; and

(3) the N number of each aircraft that was based in this state for more than sixty (60) days during the preceding quarter.

SECTION 24. IC 6-7-1-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) Distributors who hold certificates and retailers shall be agents of the state in the collection of the taxes imposed by this chapter and the amount of the tax levied, assessed, and imposed by this chapter on cigarettes sold, exchanged, bartered, furnished, given away, or otherwise disposed of by distributors or to retailers. Distributors who hold certificates shall be agents of the department to affix the required stamps and shall be entitled to purchase the stamps from the department at a discount of ~~one and two-tenths~~ **two and five hundred twenty-three thousandths** percent (~~1.2%~~) (**2.523%**) of the amount of the tax stamps purchased, as compensation for their labor and expense.

(b) The department may permit distributors who hold certificates and who are admitted to do business in Indiana to pay for revenue stamps within thirty (30) days after the date of purchase. However, the privilege is extended upon the express condition that:

(1) except as provided in subsection (c), a bond or letter of credit satisfactory to the department, in an amount not less than the sales price of the stamps, is filed with the department; and

(2) proof of payment is made of all local property, state income, and excise taxes for which any such distributor may be liable. The bond or letter of credit, conditioned to secure payment for the stamps, shall be executed by the distributor as principal and by a corporation duly authorized to engage in business as a surety company or financial institution in Indiana.

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(c) If a distributor has at least five (5) consecutive years of good credit standing with the state, the distributor shall not be required to post a bond or letter of credit under subsection (b).

SECTION 25. IC 6-8.1-3-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.5. The department may not

(1) include the amount of revenue collected or tax liability assessed in the evaluation of an employee. ~~or~~

(2) ~~impose or suggest production quotas or goals for employees based on the number of cases closed.~~

SECTION 26. IC 6-8.1-6-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2008]: Sec. 3. (a) A document, including a form, a return, a payment, or a writing of any type, which must be filed with the department by a prescribed date, is considered filed:

(1) in cases where it is mailed through the United States mail, on the date displayed on the post office cancellation mark stamped on the document's wrapper;

(2) in cases where it is delivered to the department in any manner other than through the United States mail, on the date on which the department physically receives the document; or

(3) in cases where a payment is made by an electronic fund transfer, on the date the ~~taxpayer's bank account is charged.~~ **taxpayer issues the payment order for the electronic fund transfer.**

(b) If a document is sent through the United States mail by registered mail, certified mail, or certificate of mailing, then the date of the registration, certification, or certificate, as evidenced by any record authenticated by the United States Post Office, is considered the postmark date.

(c) If a document is mailed to the department through the United States mail and is physically received after the appropriate due date without a legible correct postmark, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date.

(d) If a document is mailed to, but not received by, the department, the person who mailed the document will be considered to have filed the document on or before the due date if the person can show by reasonable evidence to the department that the document was deposited in the United States mail on or before the due date and if the person

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1 files with the department a duplicate document within thirty (30) days
 2 after the date the department sends notice that the document was not
 3 received.

4 SECTION 27. IC 6-8.1-9-1, AS AMENDED BY P.L.2-2005,
 5 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2007]: Sec. 1. (a) If a person has paid more tax than the
 7 person determines is legally due for a particular taxable period, the
 8 person may file a claim for a refund with the department. Except as
 9 provided in subsections (f) and (g), in order to obtain the refund, the
 10 person must file the claim with the department within three (3) years
 11 after the latter of the following:

12 (1) The due date of the return.

13 (2) The date of payment.

14 For purposes of this section, the due date for a return filed for the state
 15 gross retail or use tax, the gasoline tax, the special fuel tax, the motor
 16 carrier fuel tax, the oil inspection fee, or the petroleum severance tax
 17 is the end of the calendar year which contains the taxable period for
 18 which the return is filed. The claim must set forth the amount of the
 19 refund to which the person is entitled and the reasons that the person
 20 is entitled to the refund.

21 (b) When the department receives a claim for refund, the
 22 department shall consider the claim for refund and **may shall, if the**
 23 **taxpayer requests**, hold a hearing on the claim for refund to obtain and
 24 consider additional evidence. After considering the claim and all
 25 evidence relevant to the claim, the department shall issue a decision on
 26 the claim, stating the part, if any, of the refund allowed and containing
 27 a statement of the reasons for any part of the refund that is denied. The
 28 department shall mail a copy of the decision to the person who filed the
 29 claim. If the department allows the full amount of the refund claim, a
 30 warrant for the payment of the claim is sufficient notice of the decision.

31 (c) If the person disagrees with any part of the department's
 32 decision, the person may appeal the decision, regardless of whether or
 33 not ~~he~~ **the person** protested the tax payment or whether or not the
 34 person has accepted a refund. The person must file the appeal with the
 35 tax court. The tax court does not have jurisdiction to hear a refund
 36 appeal suit, if:

37 (1) the appeal is filed more than three (3) years after the date the
 38 claim for refund was filed with the department;

39 (2) the appeal is filed more than ninety (90) days after the date the
 40 department mails the decision of denial to the person; or

41 (3) the appeal is filed both before the decision is issued and
 42 before the one hundred eighty-first day after the date the person

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1 files the claim for refund with the department.

2 (d) The tax court shall hear the appeal de novo and without a jury,
3 and after the hearing may order or deny any part of the appealed
4 refund. The court may assess the court costs in any manner that it feels
5 is equitable. The court may enjoin the collection of any of the listed
6 taxes under IC 33-26-6-2. The court may also allow a refund of taxes,
7 interest, and penalties that have been paid to and collected by the
8 department.

9 (e) With respect to the motor vehicle excise tax, this section applies
10 only to penalties and interest paid on assessments of the motor vehicle
11 excise tax. Any other overpayment of the motor vehicle excise tax is
12 subject to IC 6-6-5.

13 (f) If a taxpayer's federal income tax liability for a taxable year is
14 modified by the Internal Revenue Service, and the modification would
15 result in a reduction of the tax legally due, the due date by which the
16 taxpayer must file a claim for refund with the department is the later of:

17 (1) the date determined under subsection (a); or

18 (2) the date that is six (6) months after the date on which the
19 taxpayer is notified of the modification by the Internal Revenue
20 Service.

21 (g) If an agreement to extend the assessment time period is entered
22 into under IC 6-8.1-5-2(f), the period during which a person may file
23 a claim for a refund under subsection (a) is extended to the same date
24 to which the assessment time period is extended.

25 SECTION 28. IC 6-8.1-10-1, AS AMENDED BY P.L.1-2006,
26 SECTION 147, IS AMENDED TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2007]: Sec. 1. (a) If a person fails to file a
28 return for any of the listed taxes, fails to pay the full amount of tax
29 shown on the person's return by the due date for the return or the
30 payment, or incurs a deficiency upon a determination by the
31 department, the person is subject to interest on the nonpayment.

32 (b) The interest for a failure described in subsection (a) is the
33 adjusted rate established by the commissioner under subsection (c),
34 from the due date for payment. The interest applies to:

35 (1) the full amount of the unpaid tax due if the person failed to
36 file the return;

37 (2) the amount of the tax that is not paid, if the person filed the
38 return but failed to pay the full amount of tax shown on the return;

39 or

40 (3) the amount of the deficiency.

41 (c) The commissioner shall establish an adjusted rate of interest for
42 a failure described in subsection (a) and for an excess tax payment on

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or before November 1 of each year. For purposes of subsection (b), the adjusted rate of interest shall be the percentage rounded to the nearest whole number that equals two (2) percentage points above the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report. For purposes of IC 6-8.1-9-2(c), the adjusted rate of interest for an excess tax payment ~~is the percentage rounded to the nearest whole number that equals the average investment yield on state money for the state's previous fiscal year, excluding pension fund investments, as published in the auditor of state's comprehensive annual financial report. must be the same as~~ **the adjusted rate of interest determined under this subsection for a failure described in subsection (a).** The adjusted rates of interest established under this subsection shall take effect on January 1 of the immediately succeeding year.

(d) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(e) Except as provided by IC 6-8.1-3-17(c) and IC 6-8.1-5-2, the department may not waive the interest imposed under this section.

(f) Subsections (a) through (c) do not apply to a motor carrier fuel tax return.

SECTION 29. IC 6-2.5-8-10 IS REPEALED [EFFECTIVE JULY 1, 2007].

SECTION 30. [EFFECTIVE UPON PASSAGE] **(a) The commissioner of the department of state revenue shall revise any schedule specifying the adjusted rate of interest for excess tax payments as necessary to comply with IC 6-8.1-10-1, as amended by this act. A schedule revised under this SECTION takes effect July 1, 2007.**

(b) This SECTION expires December 31, 2007.

SECTION 31. [EFFECTIVE JULY 1, 2007] **IC 6-7-1-17, as amended by this act, applies only to cigarette stamps purchased by distributors after June 30, 2007.**

SECTION 32. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)] **IC 6-3-3-12, as amended by this act, applies to taxable years beginning after December 31, 2006.**

SECTION 33. [EFFECTIVE JULY 1, 2007] **IC 6-3-4-4.1, as amended by this act, applies to taxable years beginning after December 15, 2007.**

SECTION 34. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)] **(a) As used in this SECTION, "department" refers to the department of state revenue.**

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1 (b) A retail merchant that sold tangible personal property to a
 2 person that used or consumed the tangible personal property in
 3 providing public transportation under IC 6-2.5-5-27 may verify
 4 that the sale was exempt from taxation under IC 6-2.5 by using the
 5 information contained in form ST-135 for the transaction.

6 (c) If a retail merchant provides the department with the
 7 information from form ST-135 to verify that a sale described in
 8 subsection (b) is exempt from taxation under IC 6-2.5, the retail
 9 merchant may request:

10 (1) a refund of gross retail tax plus any penalties and interest
 11 paid to the department; or

12 (2) that the department satisfy any outstanding gross retail
 13 tax liabilities, including any penalties and interest for tax
 14 liabilities;

15 for the tangible personal property used or consumed in providing
 16 public transportation.

17 (d) This SECTION expires December 31, 2008.

18 SECTION 35. An emergency is declared for this act.

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COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 500, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, between lines 11 and 12, begin a new paragraph and insert:

"SECTION 3. IC 6-2.5-3-2, AS AMENDED BY P.L.162-2006, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

(b) The use tax is also imposed on the storage, use, or consumption of a vehicle, an aircraft, or a watercraft, if the vehicle, aircraft, or watercraft:

- (1) is acquired in a transaction that is an isolated or occasional sale; and
- (2) is required to be titled, licensed, or registered by this state for use in Indiana.

(c) The use tax is imposed on the addition of tangible personal property to a structure or facility, if, after its addition, the property becomes part of the real estate on which the structure or facility is located. However, the use tax does not apply to additions of tangible personal property described in this subsection, if:

- (1) the state gross retail or use tax has been previously imposed on the sale or use of that property; or
- (2) the ultimate purchaser or recipient of that property would have been exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility.

(d) The use tax is imposed on a person who:

- (1) manufactures, fabricates, or assembles tangible personal property from materials either within or outside Indiana; and
- (2) uses, stores, distributes, or consumes tangible personal property in Indiana.

(e) Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over tangible personal property, if:

- (1) the property is delivered into Indiana by or for the purchaser of the property;
- (2) the property is delivered in Indiana for the sole purpose of

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being processed, printed, fabricated, or manufactured into, attached to, or incorporated into other tangible personal property; and

(3) the property is subsequently transported out of state for use solely outside Indiana.

(f) As used in this subsection, "prepurchase evaluation" means an examination of an aircraft by a potential purchaser for the purpose of obtaining information relevant to the potential purchase of the aircraft. Notwithstanding any other provision of this section, the use tax is not imposed on the keeping, retaining, or exercising of any right or power over an aircraft, if:

(1) the aircraft is titled, registered, or based (as defined in IC 6-6-6.5-1(m)) in another state or country;

(2) the aircraft is delivered to Indiana by or for a nonresident owner or purchaser of the aircraft;

(3) the aircraft is delivered to Indiana for the sole purpose of being repaired, refurbished, remanufactured, or subjected to a prepurchase evaluation; and

(4) after completion of the repair, refurbishment, remanufacture, or prepurchase evaluation, the aircraft is transported to a destination outside Indiana."

Page 4, delete lines 29 through 36, begin a new paragraph and insert:

"(e) A transaction in which a person acquires an aircraft for rental or leasing in the ordinary course of the person's business is not exempt from the state gross retail tax unless the person establishes, under guidelines adopted by the department in the manner provided in IC 4-22-2-37.1 for the adoption of emergency rules, that the annual amount of the lease revenue derived from leasing the aircraft is equal to or greater than fifteen percent (15%) of the greater of the original cost or the book value of the aircraft."

Page 5, between lines 23 and 24, begin a new paragraph and insert:

"SECTION 8. IC 6-2.5-5-39, AS AMENDED BY P.L.92-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 39. (a) As used in this section, "cargo trailer" means a vehicle:

(1) without motive power;

(2) designed for carrying property;

(3) designed for being drawn by a motor vehicle; and

(4) having a gross vehicle weight rating of at least two thousand two hundred (2,200) pounds.



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(b) As used in this section, "recreational vehicle" means a vehicle with or without motive power equipped exclusively for living quarters for persons traveling upon the highways. The term includes a travel trailer, a motor home, a truck camper with a floor and facilities enabling it to be used as a dwelling, and a fifth wheel trailer.

(c) A transaction involving a cargo trailer ~~or~~ a recreational vehicle ~~or an aircraft~~ is exempt from the state gross retail tax if:

- (1) the purchaser is a nonresident;
- (2) upon receiving delivery of the cargo trailer ~~or~~ recreational vehicle, ~~or aircraft~~, the person transports it within thirty (30) days to a destination outside Indiana;
- (3) the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ will be titled or registered for use in another state or country;
- (4) the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ will not be titled or registered for use in Indiana; and
- (5) ~~in the case of a transaction involving a cargo trailer or recreational vehicle~~, the cargo trailer or recreational vehicle will be titled or registered in a state or country that provides an exemption from sales, use, or similar taxes imposed on a cargo trailer or recreational vehicle that is purchased in that state or country by an Indiana resident and will be titled or registered in Indiana.

A transaction involving a cargo trailer or recreational vehicle that does not meet the requirements of subdivision (5) is not exempt from the state gross retail tax.

(d) A purchaser must claim an exemption under this section by submitting to the retail merchant an affidavit stating the purchaser's intent to:

- (1) transport the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ to a destination outside Indiana within thirty (30) days after delivery; and
- (2) title or register the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ for use in another state or country.

The department shall prescribe the form of the affidavit, which must include an affirmation by the purchaser under the penalties for perjury that the information contained in the affidavit is true. The affidavit must identify the state or country in which the cargo trailer ~~or~~ recreational vehicle ~~or aircraft~~ will be titled or registered.

(e) The department shall provide the information necessary to determine a purchaser's eligibility for an exemption claimed under this section to retail merchants in the business of selling cargo trailers or recreational vehicles.

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SECTION 9. IC 6-2.5-5-42 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 42. (a) A transaction involving an aircraft is exempt from the state gross retail tax if:**

- (1) the purchaser is a nonresident;**
- (2) the purchaser transports the aircraft to a destination outside Indiana within thirty (30) days after:**
 - (A) accepting delivery of the aircraft; or**
 - (B) a repair, refurbishment, or remanufacture of the aircraft is completed, if the aircraft remains in Indiana after the purchaser accepts delivery for the purpose of accomplishing the repair, refurbishment, or remanufacture of the aircraft;**
- (3) the aircraft will be:**
 - (A) titled or registered in another state or country; or**
 - (B) if a state or country does not require a title or registration for aircraft, based (as defined in IC 6-6-6.5-1(m)) in that state or country; and**
- (4) the aircraft will not be titled or registered in Indiana.**

(b) A purchaser must claim an exemption under subsection (a) by submitting to the seller an affidavit affirming the elements required by subsection (a). In addition, the affidavit must identify the state or country in which the aircraft will be titled, registered, or based.

(c) Within sixty (60) days after:

- (1) a purchaser who claims an exemption under this section accepts delivery of the aircraft; or**
- (2) a repair, refurbishment, or remanufacture of the aircraft subject to an exemption under this section is completed, if the aircraft remains in Indiana after the purchaser accepts delivery for the purpose of accomplishing the repair, refurbishment, or remanufacture of the aircraft;**

the purchaser shall provide the seller with a copy of the purchaser's title or registration of the aircraft outside Indiana. If the state or country in which the aircraft is based does not require the aircraft to be titled or registered, the purchaser shall provide the seller with a copy of the aircraft registration application for the aircraft as filed with the Federal Aviation Administration.

(d) The department shall prescribe the form of the affidavit required by subsection (b).

SECTION 10. IC 6-2.5-5-43 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2007]: Sec. 43. (a) As used in this section, "qualified football championship event" means the National Football League championship football game, referred to as the Super Bowl.

(b) Transactions involving tangible personal property or services are exempt from the state gross retail tax if the following conditions are satisfied:

(1) Either:

(A) the National Football League acquires the property or service to facilitate the holding of a qualified football championship event; or

(B) a professional football team participating in a qualified football championship event acquires the property or service to facilitate the team's participation.

(2) Before acquiring the property or service, the National Football League or professional football team applies for and receives from the department a state gross retail tax exemption certificate under this section. The department shall specify the period for which a state gross retail tax exemption certificate issued under this section is valid."

Page 12, between lines 27 and 28, begin a new paragraph and insert:
"SECTION 14. IC 6-3-3-12, AS ADDED BY P.L.192-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

~~(a)~~ (c) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(d) As used in this section, "non-qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(e) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(f) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

(1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months

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after the account is opened;

(2) as a result of the death or disability of an account beneficiary;

(3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or

(4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

(b) (g) As used in this section, "taxpayer" means:

(1) an individual filing a single return; or

(2) a married couple filing a joint return.

(c) (h) A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

(1) Twenty percent (20%) of the **excess of:**

(A) ~~the amount of each contribution~~ **total contributions** made by the taxpayer to a college choice 529 education savings plan during the taxable year; **over**

(B) **the total amount of non-qualified withdrawals during the taxable year that were made from the account or accounts of a college choice 529 education savings plan to which the taxpayer has made contributions.**

(2) One thousand dollars (\$1,000).

(3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

(d) (i) A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

(e) (j) A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

(f) (k) To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(l) **A taxpayer who claimed a credit provided by this section in any prior taxable year must repay a part of the credit in a taxable year in which any non-qualified withdrawal is made from a college**

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choice 529 education savings plan to which the taxpayer contributed. The amount the taxpayer must repay is equal to the lesser of:

- (1) twenty percent (20%) of the excess of:
 - (A) the total amount of non-qualified withdrawals made during the taxable year from the account or accounts of a college choice 529 education savings plan to which the taxpayer has made contributions; over
 - (B) the total amount of contributions made by the taxpayer to a college choice 529 education savings plan during the taxable year; or
- (2) the excess of:
 - (A) the cumulative amount of all credits provided by this section that were claimed by a taxpayer for all prior taxable years beginning on or after January 1, 2007; over
 - (B) the cumulative amount of repayments paid by the taxpayer under this subsection for all prior taxable years beginning on or after January 1, 2007.

(m) Any required repayment under subsection (l) shall be reported by the taxpayer on the taxpayer's annual state income tax return for the taxable year in which the non-qualified withdrawal is made.

(n) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to taxpayers for each taxable year with respect to:

- (1) withdrawals or distributions made from a college choice 529 education savings plan for the taxable year; or
- (2) account closings for the taxable year."

Page 17, between lines 21 and 22, begin a new paragraph and insert: "SECTION 21. IC 6-6-6.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 1. As used in this chapter, unless the context clearly indicates otherwise:

- (a) "Aircraft" means a device which is designed to provide air transportation for one (1) or more individuals or for cargo.
- (b) "State" means the state of Indiana.
- (c) "Department" refers to the department of state revenue.
- (d) "Person" includes an individual, a partnership, a firm, a corporation, a limited liability company, an association, a trust, or an estate, or a legal representative of such.
- (e) "Owner" means a person who holds or is required to obtain a certificate of registration from the Federal Aviation Administration for

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a specific aircraft. In the event an aircraft is the subject of an agreement for the conditional sale or lease with the right of purchase upon the performance of the conditions stated in the agreement and with an immediate right of possession of the aircraft vested in the conditional vendee or lessee, or in the event the mortgagor of an aircraft is entitled to possession, then the conditional vendee or lessee or mortgagor shall be deemed to be the owner for purposes of this chapter.

(f) "Dealer" means a person who has an established place of business in this state, is required to obtain a certificate under IC 6-2.5-8-1 or IC 6-2.5-8-3 and is engaged in the business of manufacturing, buying, selling, or exchanging new or used aircraft.

(g) "Maximum landing weight" means the maximum weight of the aircraft, accessories, fuel, pilot, passengers, and cargo that is permitted on landing under the best conditions, as determined for an aircraft by the appropriate federal agency or the certified allowable gross weight published by the manufacturer of the aircraft.

(h) "Resident" means an individual or a fiduciary who resides or is domiciled within Indiana or any corporation or business association which maintains a fixed and established place of business within Indiana for a period of more than sixty (60) days in any one (1) year.

(i) "Taxable aircraft" means an aircraft required to be registered with the department by this chapter.

(j) "Regular annual registration date" means the last day of February of each year.

(k) "Taxing district" means a geographic area within which property is taxed by the same taxing units and at the same total rate.

(l) "Taxing unit" means an entity which has the power to impose ad valorem property taxes.

(m) "Base" means the location or place where the aircraft is normally hangared, tied down, housed, parked, or kept, when not in use.

(n) "Homebuilt aircraft" means an aircraft constructed primarily by an individual for personal use. The term homebuilt aircraft does not include an aircraft constructed primarily by a for-profit aircraft manufacturing business.

(o) "Pressurized aircraft" means an aircraft equipped with a system designed to control the atmospheric pressure in the crew or passenger cabins.

(p) "Establishing a base" means renting or leasing a hangar or tie down for a particular aircraft for at least thirty-one (31) days.

(q) "Inventory aircraft" means an aircraft held for resale by a registered Indiana dealer.

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(r) "Repair station" means a person who holds a repair station certificate that was issued to the person by the Federal Aviation Administration under 14 CFR Part 145.

SECTION 22. IC 6-6-6.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) Except as otherwise provided in this chapter, any resident of this state who owns an aircraft shall register the aircraft with the department not later than thirty-one (31) days after the purchase date.

(b) Except as otherwise provided in this chapter, any nonresident who bases an aircraft in this state for more than sixty (60) days shall register the aircraft with the department under this chapter not later than sixty (60) days after establishing a base in Indiana.

(c) Except as otherwise provided in this chapter, an Indiana resident who owns a homebuilt aircraft shall register the aircraft with the department not later than thirty-one (31) days after the date the Federal Aviation Administration has issued the certificate of registration and air worthiness certificate for the aircraft.

(d) Notwithstanding subsection (b), if a nonresident bases an aircraft in Indiana with a dealer **or repair station** solely for repairing, remodeling, or refurbishing the aircraft, neither the nonresident nor the dealer **or repair station** is required to register the aircraft with the department under this chapter. However, the dealer **or repair station** shall file a report with the department the month after the end of each calendar quarter. The report must list only:

(1) the ~~dealer's~~ name and address ~~and of the dealer or repair station~~;

(2) either:

(A) the dealer's certification number; or

(B) the repair station's certificate number; and

(3) the N number of each aircraft that was based in this state for more than sixty (60) days during the preceding quarter."

Page 21, after line 23, begin a new paragraph and insert:

"SECTION 29. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)] IC 6-3-3-12, as amended by this act, applies to taxable years beginning after December 31, 2006.

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SECTION 30. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 500 as introduced.)

KENLEY, Chairperson

Committee Vote: Yeas 8, Nays 2.

SENATE MOTION

Madam President: I move that Senator Dillon be added as second author of Senate Bill 500.

KENLEY

SENATE MOTION

Madam President: I move that Senate Bill 500 be amended to read as follows:

Page 4, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 4. IC 6-2.5-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) A person who acquires tangible personal property from a retail merchant for delivery in Indiana is presumed to have acquired the property for storage, use, or consumption in Indiana. **However, unless** the person or the retail merchant can produce evidence to rebut that presumption.

(b) A retail merchant is not required to produce evidence of nontaxability under subsection (a) if the retail merchant receives from the person who acquired the property an exemption certificate which certifies, in the form prescribed by the department, that the acquisition is exempt from the use tax.

(c) A retail merchant that sells tangible personal property to a person that purchases the tangible personal property for use or consumption in providing public transportation under IC 6-2.5-5-27 may verify the exemption by obtaining the person's:

- (1) name;**
- (2) address; and**
- (3) motor carrier number, United States Department of**



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Transportation number, or any other identifying number authorized by the department.

The person engaged in public transportation shall provide a signature to affirm under penalties of perjury that the information provided to the retail merchant is correct and that the tangible personal property is being purchased for an exempt purpose."

Page 29, between lines 38 and 39, begin a new paragraph and insert:
"SECTION 31. [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)] (a) As used in this SECTION, "department" refers to the department of state revenue.

(b) A retail merchant that sold tangible personal property to a person that used or consumed the tangible personal property in providing public transportation under IC 6-2.5-5-27 may verify that the sale was exempt from taxation under IC 6-2.5 by using the information contained in form ST-135 for the transaction.

(c) If a retail merchant provides the department with the information from form ST-135 to verify that a sale described in subsection (b) is exempt from taxation under IC 6-2.5, the retail merchant may request:

- (1) a refund of gross retail tax plus any penalties and interest paid to the department; or**
- (2) that the department satisfy any outstanding gross retail tax liabilities, including any penalties and interest for tax liabilities;**

for the tangible personal property used or consumed in providing public transportation.

(d) This SECTION expires December 31, 2008."

Renumber all SECTIONS consecutively.

(Reference is to SB 500 as printed January 30, 2007.)

KENLEY

SENATE MOTION

Madam President: I move that Senate Bill 500 be amended to read as follows:

Page 26, between lines 19 and 20, begin a new paragraph and insert:
"SECTION 24. IC 6-8.1-3-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2.5. The department may not

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(1) include the amount of revenue collected or tax liability assessed in the evaluation of an employee. ~~or~~
(2) ~~impose or suggest production quotas or goals for employees based on the number of cases closed:~~".

Page 29, line 31, delete "THE FOLLOWING ARE" and insert "IC 6-2.5-8-10 IS".

Page 29, line 32, delete ": IC 6-2.5-8-10; IC 6-8.1-3-2.5; IC 6-8.1-3-2.6." and insert ".".

Renumber all SECTIONS consecutively.

(Reference is to SB 500 as printed January 30, 2007.)

KENLEY

SENATE MOTION

Madam President: I move that Senate Bill 500 be amended to read as follows:

Replace the effective date in SECTION 16 with "[EFFECTIVE DECEMBER 16, 2007]".

Page 20, line 9, after "on the" insert "**lesser of the**".

Page 20, strike line 11.

Page 20, line 12, strike "income tax liability for such taxable year." and insert "**the amount calculated in subdivision (1) or the difference between the actual amount paid by the corporation on the estimated return and the amount calculated in subdivision (2).**".

Page 29, between lines 38 and 39, begin a new paragraph and insert: "**SECTION 30. [EFFECTIVE JULY 1, 2007] IC 6-3-4-4.1, as amended by this act, applies to taxable years beginning after December 15, 2007.**".

Renumber all SECTIONS consecutively.

(Reference is to SB 500 as printed January 30, 2007.)

KENLEY

SENATE MOTION

Madam President: I move that Senate Bill 500 be amended to read as follows:

Page 12, line 12, after "fiscal" insert "**year**".

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Page 16, delete lines 30 through 42, begin a new paragraph and insert:

"SECTION 14. IC 6-3-3-12, AS ADDED BY P.L.192-2006, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2007 (RETROACTIVE)]: Sec. 12. (a) As used in this section, "account" has the meaning set forth in IC 21-9-2-2.

(b) As used in this section, "account beneficiary" has the meaning set forth in IC 21-9-2-3.

(c) As used in this section, "account owner" has the meaning set forth in IC 21-9-2-4.

~~(a)~~ (d) As used in this section, "college choice 529 education savings plan" refers to a college choice 529 investment plan established under IC 21-9.

(e) As used in this section, "non-qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is not a qualified withdrawal.

(f) As used in this section, "qualified higher education expenses" has the meaning set forth in IC 21-9-2-19.5.

(g) As used in this section, "qualified withdrawal" means a withdrawal or distribution from a college choice 529 education savings plan that is made:

- (1) to pay for qualified higher education expenses, excluding any withdrawals or distributions used to pay for qualified higher education expenses if the withdrawals or distributions are made from an account of a college choice 529 education savings plan that is terminated within twelve (12) months after the account is opened;
- (2) as a result of the death or disability of an account beneficiary;
- (3) because an account beneficiary received a scholarship that paid for all or part of the qualified higher education expenses of the account beneficiary, to the extent that the withdrawal or distribution does not exceed the amount of the scholarship; or
- (4) by a college choice 529 education savings plan as the result of a transfer of funds by a college choice 529 education savings plan from one (1) third party custodian to another.

A qualified withdrawal does not include a rollover distribution or transfer of assets from a college choice 529 education savings plan to any other qualified tuition program under Section 529 of the Internal Revenue Code that is not a college choice 529 education savings plan.

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~~(b)~~ **(h)** As used in this section, "taxpayer" means:

- (1) an individual filing a single return; or
- (2) a married couple filing a joint return.

~~(c)~~ **(i)** A taxpayer is entitled to a credit against the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for a taxable year equal to the least of the following:

- (1) Twenty percent (20%) of the amount of ~~each contribution~~ **the total contributions** made by the taxpayer to **an account or accounts of** a college choice 529 education savings plan during the taxable year.
- (2) One thousand dollars (\$1,000).
- (3) The amount of the taxpayer's adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 for the taxable year, reduced by the sum of all credits (as determined without regard to this section) allowed by IC 6-3-1 through IC 6-3-7.

~~(d)~~ **(j)** A taxpayer is not entitled to a carryback, carryover, or refund of an unused credit.

~~(e)~~ **(k)** A taxpayer may not sell, assign, convey, or otherwise transfer the tax credit provided by this section.

~~(f)~~ **(l)** To receive the credit provided by this section, a taxpayer must claim the credit on the taxpayer's annual state tax return or returns in the manner prescribed by the department. The taxpayer shall submit to the department all information that the department determines is necessary for the calculation of the credit provided by this section.

(m) An account owner of an account of a college choice 529 education savings plan must repay all or a part of the credit in a taxable year in which any non-qualified withdrawal is made from the account. The amount the taxpayer must repay is equal to the lesser of:

- (1) twenty percent (20%) of the total amount of non-qualified withdrawals made during the taxable year from the account;**
- or**

- (2) the excess of:**

- (A) the cumulative amount of all credits provided by this section that were claimed by any taxpayer with respect to the taxpayer's contributions to the account for all prior taxable years beginning on or after January 1, 2007; over**
- (B) the cumulative amount of repayments paid by the account owner under this subsection for all prior taxable years beginning on or after January 1, 2008.**

(n) Any required repayment under subsection (m) shall be reported by the account owner on the account owner's annual state

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income tax return for any taxable year in which a non-qualified withdrawal is made.

(o) The executive director of the Indiana education savings authority shall submit or cause to be submitted to the department a copy of all information returns or statements issued to account owners, account beneficiaries, and other taxpayers for each taxable year with respect to:

- (1) non-qualified withdrawals made from accounts of a college choice 529 education savings plan for the taxable year; or
- (2) account closings for the taxable year."

Delete page 17.

Page 18, delete lines 1 through 38.

Renumber all SECTIONS consecutively.

(Reference is to SB 500 as printed January 30, 2007.)

KENLEY

SENATE MOTION

Madam President: I move that Senate Bill 500 be amended to read as follows:

Page 29, strike lines 17 through 18.

Page 29, line 19, strike "year, excluding pension fund investments, as".

Page 29, line 20, delete "determined by the" and insert "**must be the same as the adjusted rate of interest determined under this subsection for a failure described in subsection (a).**".

Page 29, delete line 21.

Page 29, line 22, delete "to the commissioner."

Page 29, between lines 32 and 33, begin a new paragraph and insert: "SECTION 28. [EFFECTIVE UPON PASSAGE] **(a) The commissioner of the department of state revenue shall revise any schedule specifying the adjusted rate of interest for excess tax payments as necessary to comply with IC 6-8.1-10-1, as amended by this act. A schedule revised under this SECTION takes effect July 1, 2007.**

(b) This SECTION expires December 31, 2007."

Renumber all SECTIONS consecutively.

(Reference is to SB 500 as printed January 30, 2007.)

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SENATE MOTION

Madam President: I move that Senate Bill 500 be amended to read as follows:

Page 12, line 3, delete "Thirty-two hundredths" and insert "**Six-tenths**".

Page 12, line 3, delete "(0.32%)," and insert "**(0.6%),**".

Page 12, line 10, delete "Thirteen-hundredths" and insert "**Three-tenths**".

Page 12, line 10, delete "(0.13%)," and insert "**(0.3%),**".

(Reference is to SB 500 as printed January 30, 2007.)

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